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Equity Security Holders Of USA Capital First Trust Deed Fund, LLC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE COMPANY,
USA CAPITAL REALTY ADVISORS, LLC,
USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,
USA CAPITAL FIRST TRUST DEED FUND, LLC,
USA SECURITIES, LLC,

Debtors.

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☒ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No. BK-S-06-
10725 LBR

**Objection of USACM Trust To Harrison Family
Trust Claim Filed in Wrong Debtor's Case;
Objection of FTDF to Proposed Allowance of
Claim**

Hearing Date: October 15, 2007

Hearing Time: 9:30 a.m.

1 The Harrison Family Trust 7/27/99 filed Proof of Claim No. 10725-2005 against
2 USA Commercial Mortgage Company in the amount of \$25,281.25. The USACM
3 Liquidating Trust (the "USACM Trust") hereby objects to the Harrison Trust claim to the
4 extent that such claim is based on an investment in the USA Capital First Trust Deed
5 Fund, LLC ("FTDF") . Although the Harrison Trust has attached the form Exhibit "A" for
6 a claim asserted against USACM, the Harrison Trust has also attached a statement from
7 the FTDF showing an investment of \$25,000 in the FTDF. Accordingly, to the extent the
8 Harrison Trust claim was incorrectly filed in the USA Commercial Mortgage Company
9 ("USACM") case, the USACM Trust respectfully requests that this claim be disallowed as
10 a claim against USACM. To the extent the Harrison Trust seeks to assert a claim against
11 USACM unrelated to its FTDF investment, the USACM Trust reserves its rights to file
12 further objections to such claim at a later date. Any claim asserted by the Harrison Trust
13 against USACM solely on account of its investment in FTDF is derivative of FTDF's
14 claims against USACM. Under a settlement approved by the Court on June 12, 2007, all
15 such FTDF claims were settled, with FTDF holding a \$7.0 million allowed general
16 unsecured claim and beneficial interest in the USACM Liquidating Trust. The equity
17 interest holders in FTDF will share in any recovery on account of that claim.

18 The Official Committee of Equity Security Holders of FTDF ("FTDF Committee")
19 further objects to allowance of the Harrison Trust's claim as a claim against the FTDF
20 estate.

21 Bankruptcy Code section 502 authorizes a party in interest to object to claims. See
22 11 U.S.C. § 502(a). Upon such objection, this Court, "after notice and a hearing, shall
23 determine the amount of such claim in lawful currency of the United States as of the date
24 of the filing of the petition" 11 U.S.C. § 502(b). Although a proper proof of claim is
25 presumed valid under Bankruptcy Rule 3001(f), once an objection controverts the
26 presumption, the creditor has the ultimate burden of persuasion as to the validity and

1 amount of the claim. Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer
2 Mortg.), 178 B.R. 222, 226 (9th Cir. B.A.P. 1995), aff'd, 91 F.3d 151 (9th Cir. 1996)
3 (quoting In re Allegheny International, Inc., 954 F.2d 167, 173-74 (3d Cir. 1992)).

4 The FTDF Committee has analyzed the Harrison Trust claim and has determined
5 that it has been incorrectly designated as a "proof of claim." Pursuant to Bankruptcy Code
6 section 502, a "creditor . . . may file a proof of claim." An equity security interest holder,
7 however, must file a proof of interest. See 11 U.S.C. § 501(a). Bankruptcy Code
8 section 101(16) defines "equity security" to include a "share in a corporation, whether or
9 not transferable or denominated 'stock', or *similar security*" or a "warrant or right . . . to
10 purchase, sell, or subscribe to a share, security, or interest" of a share in a corporation. 11
11 U.S.C. § 101(16) (emphasis added). See also Nev. Rev. Stat. §86.521 (upon dissolution of
12 a limited liability company, a limited liability company must pay liabilities to creditors
13 before paying liabilities in respect of profits and/or capital to members of the limited
14 liability company).

15 To the extent the Harrison Trust is asserting a claim against FTDF, such claim
16 appears to be based on its membership in the FTDF and not based on any debt the
17 claimants hold against the FTDF. For example, annexed to the Harrison Trust claim is an
18 account statement that list the number of shares the Harrison Trust holds in the FTDF, the
19 price of such shares, and the FTDF Member's account identification number. Membership
20 interests and/or shares in the FTDF clearly fall within the definition of "equity security"
21 under Bankruptcy Code section 101(16). Thus, the holders of the equity interests are
22 equity security interest holders of the FTDF and do not hold unsecured claims against the
23 FTDF estate.

24 This objection does not seek to prejudice the rights of the Harrison Trust as an
25 FTDF member to recover from the FTDF estate on account of its membership interest of
26 \$25,000, which exact amount is reflected in the FTDF statement attached by the Harrison

1 Trust to the Harrison Trust claim. The Harrison Trust shall retain its interest in FTDF in
2 the amount of \$25,000 as reflected in the books and records of FTDF. Indeed, the
3 Harrison Trust has received distributions based on this FTDF membership interest to date,
4 with no objection.

5 Accordingly, the USACM Trust and the FTDF Committee seek entry of an order
6 that will disallow the Harrison Trust claim against USACM to the extent it based on an
7 FTDF investment, disallow any proposed allowance of the Harrison Trust claim in the
8 FTDF case, and appropriately allow the Harrison Trust to retain its equity interest in the
9 FTDF in the amount of \$25,000 as reflected in the books and records of FTDF as of the
10 bankruptcy petition filing date.

11 This objection is made pursuant to Bankruptcy Code section 502, Federal Rule of
12 Bankruptcy Procedure 3007, and Local Rule of Bankruptcy Practice 3007.

13 Dated: August 8, 2007

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15 By: /s/ Eve H. Karasik
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8 SECURITY HOLDERS
9 OF USA CAPITAL FIRST TRUST DEED
10 FUND, LLC

8 Copy of the foregoing
9 Mailed this 8th day of
10 August, 2007 to:

11 The Harrison Family Trust 7/27/99
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14 930 Dorcey Drive
15 Incline Village, NV 89451

16 By /s/ Renee L. Creswell
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